

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

**STEVE WELLMAN and  
APRIL WELLMAN**

Plaintiffs,

 $\nu S$ 

**USAA GENERAL INDEMNITY  
COMPANY,**

Defendant.

Case No. 5:14-cv-00549-HE

**AMENDED COMPLAINT**

**COME NOW** the Plaintiffs, Steve Wellman and April Wellman (hereinafter “Plaintiffs”), for their claims against Defendant, USAA General Indemnity Company (hereinafter “USAA”), states as follows:

1. Plaintiffs are residents of Cleveland County, Oklahoma.
2. Defendant USAA is a corporation incorporated under the laws of the State of Texas.
3. Plaintiffs entered into a contract of insurance with Defendant USAA to provide coverage for their residence, household contents, and personal property. Plaintiffs' insured property is located in Cleveland County, Oklahoma.
4. Thereafter, Defendant USAA issued the Homeowners Policy of insurance (Policy No. 026847386) to the Plaintiffs.
5. USAA represented to the Plaintiffs, directly and through its agents that it

would conduct itself in accordance with Oklahoma law and would fully and fairly investigate and pay claims. Plaintiffs relied on said representations.

6. On or about the 20<sup>th</sup> day of May, 2013, and May 31, 2013, Plaintiffs' property, which was insured by the subject homeowner's policy of insurance, was heavily damaged as the direct result of a catastrophic tornadoes.

7. Consequently, Plaintiffs properly and timely submitted a claim to Defendant USAA for the property damage resulting from the May 20, 2013, and May 31, 2013, tornadoes.

8. Defendant USAA confirmed Plaintiffs' property had in fact sustained direct physical damage as a result of catastrophic tornadoes which occurred on or about the 20<sup>th</sup> day of May, 2013, and May 31, 2013, and that said losses were covered under the terms and conditions of Plaintiffs' homeowners policy with USAA.

9. Subsequently, Defendant USAA paid portions of Plaintiffs' claims based on its purported investigation and estimate.

**FIRST CAUSE OF ACTION**  
**BREACH OF CONTRACT**

10. Plaintiffs entered into a contract of insurance with Defendant USAA to provide coverage for their dwelling and personal property. The Homeowners Policy with Defendant USAA was in full force and effect at all material times hereto.

11. Plaintiffs provided proper and timely notice to Defendant USAA of their claims arising from the catastrophic tornadoes of May 20, 2013 and May 31, 2013.

12. Plaintiffs have in all material ways, complied with the terms and conditions of the policy.

13. Defendant USAA, however, has breached its contractual obligations under the terms and conditions of the insurance contract with Plaintiffs by failing to pay Plaintiffs all benefits to which they are entitled under the terms and conditions of the policy.

14. As a result of Defendant USAA's breach of contract and other wrongful conduct, Plaintiffs have sustained financial losses, mental and emotional distress and have been damaged in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00), exclusive of attorneys' fees, costs and interest.

**SECOND CAUSE OF ACTION**  
**BAD FAITH**

Plaintiffs adopt and re-plead paragraphs 1 through 14 above, and for their claim against Defendant USAA further allege as follows:

15. Defendant USAA owed a duty to Plaintiffs to deal fairly and in good faith.

16. Defendant USAA breached its duty to deal fairly and in good faith by engaging in the following acts and omissions:

a. failing to pay the full and fair amount for the property damage sustained by Plaintiffs from the May 20, 2013, and May 31, 2013, tornadoes in accordance with the terms and conditions of their insurance policy;

b. failing to pay all additional coverages due and owing to Plaintiffs under the

terms and conditions of their homeowners policy of insurance, thereby unfairly and without valid basis, reducing the fair amount of Plaintiffs' claim;

c. purposefully, wrongfully and repeatedly withholding pertinent benefits, coverages and other provisions due Plaintiffs under the terms and conditions of their insurance policy in violation of the Unfair Claims Settlement Practices Act, 36 O.S. §§1250.1-1250.16;

d. purposefully, wrongfully and repeatedly failing to communicate all coverages and benefits applicable to Plaintiffs' claim;

e. forcing Plaintiffs to retain counsel to recover insurance benefits to which they are entitled under the terms and conditions of the insurance contract;

f. failing to conduct a fair and objective investigation of the damage to Plaintiffs' home; and,

g. intentionally engaging in outcome-oriented investigation.

17. Defendant USAA's obligations arise from both the express written terms of the policy and the Oklahoma Insurance Code. USAA's failure to implement and/or follow Oklahoma's statutory Insurance Code constitutes bad faith.

18. The conduct of Defendant USAA, as described above, constitutes bad faith and is a material breach of the terms and conditions of the insurance contract between the parties.

19. As a direct result of Defendant USAA's bad faith, Plaintiffs' claim was unnecessarily delayed, inadequately investigated, and wrongly underpaid. Said actions

resulted in additional profits and financial windfall for Defendant USAA.

20. As a result of Defendant USAA's conduct, Plaintiffs have sustained financial losses, mental and emotional distress and have been damaged in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00), exclusive of attorneys' fees, costs and interest.

21. Defendant USAA's conduct was intentional, willful, malicious and in reckless disregard of the rights of Plaintiffs, and is sufficiently egregious in nature so as to warrant the imposition of punitive damages.

22. Plaintiffs further allege Defendant USAA enjoyed increased financial benefits and ill-gotten gains as a direct result of the wrongful conduct described above herein, which resulted in the injury to Plaintiffs.

### **PRAYER FOR RELIEF**

**WHEREFORE**, premises considered, Plaintiffs pray for judgment in their favor and against Defendant, USAA Casualty Insurance Company for:

a) Payment for all contractual benefits for all coverages afforded to Plaintiffs under the subject homeowners policy of insurance for damage to their property caused by the May 20, 2013, and May 31, 2013, tornadoes, with interest on all amounts due;

b) Compensatory damages for intentional infliction of emotional distress and mental pain and suffering;

c) Disgorgement of the increased financial benefits derived by any and/or all of the Defendant as a direct result of the Defendant's wrongful conduct;

- d) Actual and punitive damages each in an amount in excess of \$75,000.00;
- and,
- e) Prejudgment interests, costs and attorneys' fees.

Respectfully submitted,

/s/ Carole Dulisse

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**ATTORNEYS' LIEN CLAIMED  
JURY TRIAL DEMANDED**

**CERTIFICATE OF SERVICE**

On the 31<sup>st</sup> day of July, 2014, this was served in compliance with Rule 5 of the Federal Rules of Civil Procedure to the following counsel of record:

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